

## **VARIANCE PROCESS - FREQUENTLY ASKED QUESTIONS**

- ***What is a variance?***

The Town reviews building-permit applications for building projects for compliance with two codes: the Building Code and the Zoning Code.

The Building Code regulates how the structure is built with special emphasis on issues of safety. The Town has adopted the State Building Code (and by reference the International Residential Building Code) and may not grant any variance or deviation from it.

The Zoning Code regulates land use within and specific to Beaux Arts Village with emphasis on the size, location, and placement of structures on your property. The Town may grant variances only to Zoning Code Section 8. “ Location, Size and Height of Buildings and Structures, Appurtenant Buildings, Structures and Devices; Lot Coverage; and Gross Floor Area”. Sometimes there are unique circumstances on a property that make compliance with this section of the Zoning Code unreasonable. In such cases, a property owner may request a variance seeking permission to build something that does not comply with the code. The Board of Adjustment is empowered by the Town Council to hear such requests and decide whether to grant the variances based on the request's ability to meet each of five (5) criteria. These criteria are found in the Variance Section of the current Zoning Code.

- ***What is a variance application packet?***

The packet includes the application form, checklist, instructions for submittal, and the Zoning Code ordinances.

- ***When will the Board of Adjustment hear my request?***

The Board of Adjustment meets on the first Wednesday of every month to hear variance requests. Your complete application must be submitted at least 3 weeks prior to that date. During that three weeks, your application will be reviewed by the Town Planner, who will prepare a Staff Report for the Board setting forth the facts of your request and recommending whether to grant or deny it based on those facts. You will receive a copy of the report prior to the Board's public hearing.

- ***Should the applicant and/or agent attend the meeting?***

Yes, you or your agent should be present at the public hearing to explain your project and answer questions.

- ***If the application is not complete or a criterion is not addressed fully, will the Board or Planner fill in the blanks?***

No, the responsibility for completing the variance questionnaire rests solely with the applicant. If the description of how the project meets all of the criteria are not fully supported with written

information and appropriate drawings or pictures, the Board may find that information insufficient and the criteria are not satisfied. A majority of the Board must decide that all five criteria have been satisfied in order to grant your variance.

- ***Is endorsement of neighbors important?***

You are neither encouraged nor discouraged from seeking the endorsement of neighbors or Village residents. The Board members will individually decide the value of such comments.

- ***If my neighbor was granted a variance and I think my circumstances are similar, may I assume my request will be granted?***

No, variances are exceptional in nature, and no property or request is identical. A variance decision for one property does not establish a precedent for another circumstance or property, similar or not. The Board makes all variance decisions on a case-by-case basis.

- ***How does the applicant demonstrate that the request is the minimum necessary?***

You must demonstrate that a hardship exists and that you are unable to site or design your project within the allowed building limits. The Board expects to be convinced that your proposal is the minimum degree of non-conformity.

- ***Should the applicant try to explain and discuss the variance with Board of Adjustment members prior to the meeting?***

No. You should not have any communications with members of the Board outside of the public hearing. Such *ex parte* communication is prohibited and may form the basis of an appeal by any party of record. Because Board of Adjustment hearings are quasi-judicial proceedings, Boardmembers must disclose fully all communications regarding your variance request that may have taken place prior to the hearing. If you have questions or need to explain your circumstances more completely, you should contact the Town Planner.

- ***What do the variance criteria mean?***

To answer that question, let's review each of the variance criteria.

**Criterion 1.** The variance will not constitute a grant of special privilege inconsistent with the limitations upon uses of other properties in the Town.

**Special privilege** is defined as an exceptional privilege beyond the uses available to other Villagers.

**Limitations upon uses of other properties** is defined as uses that include, but are not limited, to setbacks, height, gross floor area, lot coverage and impervious surface.

**Criterion 2.** The granting of the variance will not be materially detrimental to the public welfare or injurious to other properties or improvements in the Town. It will be consistent with the Town's Comprehensive Plan.

**Materially detrimental to the public welfare** is defined as adversely affecting a neighbor's property; adversely affecting the rights of Villagers to enjoy Town property and property owned by the Western Academy of Beaux Arts; and causing safety concerns for pedestrians and traffic.

**The Comprehensive Plan** is a guide for all development in the Town. You may obtain a copy from the Town Clerk or visit the Town website.

**Criterion 3.** The variance is necessary because of special circumstances relating to size, shape, topography, location, surroundings and features of the subject property.

**Special circumstances** are listed above and defined as unique features of the property on which the structures are located. **Features** may include, but are not limited to, trees, or other unique natural or built aspects of a property that have community value.

**Criterion 4.** The need for a variance has not arisen from actions previously taken by the applicant (owner).

**Owner** is defined, for the purposes of this criterion, as the current owner.

**Actions previously taken** is defined as the current perceived hardship is created (1) by a past action of the current owner; or (2) as a remedy for a current unapproved or non-conforming action.

**Criterion 5.** It is the minimum necessary to permit the owner reasonable use of the property.

**Minimum** is defined as the least amount of non-conformity needed to grant relief from the zoning code regulation.

**Reasonable use of the property** is defined as use in keeping with the general level of use of similar properties in Town.

- ***What is the Board of Adjustment's process in reviewing an application?***

The Board of Adjustment reviews all material submitted by the applicant, the Town Planner, and the public prior to the meeting to become knowledgeable about your variance request. Prepared with this factual information, the Board is then ready to conduct an Open Record Hearing for the applicant and public as to whether the variance application does satisfy the five criteria. Upon conclusion of the Open Record Hearing, the Board will close the hearing to further testimony, deliberate on all input received, and make its decision.

- ***How is an Open Record Hearing conducted?***

The Chair of the Board will open the public hearing and follow the following steps in order.

1. Acknowledgement of Boardmember Ex Parte Conversation/Appearance of Fairness
2. Staff Presentation of Report
3. Testimony of Applicant (includes response to Staff Report)
4. Testimony of Public
5. Response by Applicant to Public Testimony
6. Response by Staff, if any
7. Questions by Boardmembers of Staff, Applicant and Public
8. Closing of Open Record Hearing. After the hearing is closed, no more testimony from the applicant or public will be heard.
9. Deliberation and decision of the Board.

- ***How is the Board's deliberation on the variance conducted?***

1. Boardmembers will discuss each criterion separately. When such discussion is concluded, The Board will vote as to whether that criterion is satisfied.
2. During deliberations, Boardmembers may ask for clarification from staff or legal counsel.
3. Upon conclusion of discussion of all five criteria, a Boardmember will make a motion as to whether the variance should be granted or denied. After th motion is seconded, the Board will vote on whether to grant the variance, grant the variance with conditions, or deny the variance. **No variance may be granted unless all five criteria are satisfied.**

- ***When is the Board's action on the variance complete?***

The Board, or its designee, will prepare a document called the Findings, Conclusions and Decision on the variance. The Chair of the Board will review these findings and sign and date them when approved. The date the findings are approved is the date of the action on the variance, i.e. the date after which the variance is in force. From that date, the 14-day **appeal period** begins.

- ***What is an appeal period?***

An appeal period is required to allow any Party of Record (i.e. any person who gave testimony entered into the record) or the Applicant to appeal the Board's decision. When a variance is granted or granted with conditions, no permit may be issued until the appeal period is concluded. When a variance is denied, the applicant must notify the Town Clerk in writing of their intention to appeal within 14 days of the action on the variance. Such appeals are heard at a Closed Record Hearing before the Town Council. Because the record for such a hearing is closed, no **new** evidence or testimony will be accepted or heard. The Town Council will review the appeal to determine (1) whether the Board conducted its Open Record Hearings according to the legal procedures set by state and local statutes and (2) whether there was substantial evidence to support the findings of the Board of Adjustment.